

Decision **PROPOSED DECISION OF ALJ WILSON** (Mailed 3/10/2015)

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

Application of James L. and Marianne S. Orvis to sell, and Aspen Forest Investment Co., LLC, to buy, Five Thousand (5,000) Shares of the Common Stock of the water system known as Lake Alpine Water Company, Inc. (U148WTD) Located in Alpine County, California.

Application 11-04-013  
(Filed April 15, 2011)

**DECISION ASSESSING A PENALTY OF \$5,000  
ON ASPEN FOREST INVESTMENT CO., LLC**

**Summary**

By this decision, pursuant to Public Utilities (Pub. Util.) Code § 2111,<sup>1</sup> we impose a penalty of \$5,000 on Aspen Forest Investment Co., LLC (Aspen). This penalty for one violation of Pub. Util. Code § 854(a), is assessed on just one of the applicants, Aspen, because the other applicants, James L. and Marianne S. Orvis,

---

<sup>1</sup> Every corporation or person, other than a public utility and its officers, agents, or employees, which or who knowingly violates or fails to comply with, or procures, aids or abets any violation of any provision of the California Constitution relating to public utilities or of this part, or fails to comply with any part of any order, decision, rule, direction, demand, or requirement of the California Public Utilities Commission, or who procures, aids, or abets any public utility in the violation or noncompliance, in a case in which a penalty has not otherwise been provided for the corporation or person, is subject to a penalty of not less than five hundred dollars (\$500), nor more than fifty thousand dollars (\$50,000) for each offense.

*(Amended by Stats. 2012, Ch. 464, Sec. 3. Effective January 1, 2013.)*

have both passed away. Pursuant to Pub. Util. Code §1701.5, this proceeding is resolved, but remains open to address a pending application for rehearing.

## **1. Background**

On March 29, 2013, the California Public Utilities Commission (Commission) issued Decision (D.) 13-03-007, granting prospective authority for James L. and Marianne S. Orvis to conditionally sell, and Aspen Forest Investment Co., LLC, (Aspen) (jointly referred to as Applicants) to conditionally buy 5,000 shares of the common stock in Lake Alpine Water Company (LAWC).<sup>2</sup> In particular, Ordering Paragraph No. 3 (OP 3) states that:

“In order to determine whether a fine should be imposed on James L. and Marianne S. Orvis and Aspen for violation of Public Utilities Code Section § 854(a) by not filing an application requesting authority for Aspen to acquire stock prior to the 2003 transaction, we direct the assigned Administrative Law Judge (ALJ) to open a second phase of the current application. The scope of this phase will be limited to: 1) whether a fine should be levied; and 2) if so, what amount that fine should be. The assigned Commissioner to this proceeding will determine the categorization and need for hearing of the second phase of this proceeding in their Amended Scoping Memo.”<sup>3</sup>

By D.13-03-017, the Commission also determined that “Aspen has the experience, ability, and financial resources to own 50 percent of the common stock in LAWC.”<sup>4</sup>

---

<sup>2</sup> D.13-03-007 at 2.

<sup>3</sup> D.13-03-007 at 40.

<sup>4</sup> See D.13-03-017 at Conclusion of Law 2.

On April 23, 2013, in compliance with OP 3, the assigned Administrative Law Judge (ALJ) issued an electronic mail (e-mail) ruling, in which she opened a second phase in the current application for the limited purpose of determining: 1) whether a fine should be levied against James L. and Marianne S. Orvis and Aspen; and 2) if so, what amount that fine should be. The assigned ALJ also set a prehearing conference (PHC) for May 28, 2013, which was subsequently changed to June 4, 2013, due to scheduling conflicts of parties (via an April 24, 2013 e-mail ruling of the assigned ALJ). On June 4, 2013, a PHC was held, in which parties discussed the scope and schedule of the second phase of this proceeding.

Because D.13-03-017 uses the term “fine” and Pub. Util. Code § 2111 uses the term “penalty” when addressing how to resolve a violation, we use these terms interchangeably in this decision only.

On June 27, 2013, an assigned Commissioner’s Scoping Memo and Ruling amending the May 17, 2013 amended Scoping Memo and Ruling of the assigned Commissioner and ALJ.<sup>5</sup>

In D.13-03-007, the Commission found that applicants violated Pub. Util. Code § 854(a), but left it to this second phase of Application (A.) 11-04-013 to:

- a. Determine whether James L. and Marianne S. Orvis and Aspen’s lack of compliance with Pub. Util. Code § 854(a) warrants the levying of a penalty in the form of a fine on these applicants; and

---

<sup>5</sup> (A.11-04-013) (See assigned Commissioners Scoping Memo and Ruling, June 27, 2013.)

b. If so, what amount that fine should be.<sup>6</sup>

## 2. Analysis and Conclusion

In determining penalties, the Commission looks to past decisions for guidance, including but not limited to D.98-12-075, which provides the criteria by which the size of a penalty is determined.

Aspen argues that a penalty is not applicable, pursuant to Pub. Util. Code § 2107 because neither Aspen nor James & Marianne Orvis are utilities.<sup>7</sup> Aspen's argument is incomplete. Aspen is correct that a penalty under Pub. Util. Code § 2107 is not applicable to Aspen because Aspen is not a public utility. However, Aspen is subject to a penalty under Pub. Util. Code § 2111 which includes any "...corporation or person, other than a public utility...which fails to comply with...any requirement of the commission...aid[ing], or abet[ing] any public utility in the violation or noncompliance...is subject to a penalty..."<sup>8</sup> Aspen is a business entity and a legal person, both of which are included in Pub. Util. Code § 2111 granting the Commission regulatory authority to impose monetary

---

<sup>6</sup> D.13-03-007 at 40.

<sup>7</sup> See Opening Brief of Aspen at 3.

<sup>8</sup> Pub. Util. Code § 2111. Every corporation or person, other than a public utility and its officers, agents, or employees, which or who knowingly violates or fails to comply with, or procures, aids or abets any violation of any provision of the California Constitution relating to public utilities or of this part, or fails to comply with any part of any order, decision, rule, direction, demand, or requirement of the commission, or who procures, aids, or abets any public utility in the violation or noncompliance, in a case in which a penalty has not otherwise been provided for the corporation or person, is subject to a penalty of not less than five hundred dollars (\$500), nor more than fifty thousand dollars (\$50,000) for each offense. (Amended by Stats. 2012, Ch. 464, Sec. 3. Effective January 1, 2013.)

penalties for Public Utilities Code violations. Thus, the Commission may impose a penalty on Aspen in this case for violating Pub. Util. Code § 854(a).

Ratepayers of Lake Alpine Water Company (RLAWC) proposes an approximately \$1.5 million financial penalty and other non-financial penalties.<sup>9</sup> In support of its proposal, RLAWC references a number of issues that have already been addressed and rejected in D.13-03-007, including but not limited to: 1) loans and terms of those loans; 2) installation of meters; 3) capital expenditures including but not limited to a tank, the roof of a tank, water meters, water rights, a water treatment plant; 4) rates charged to LAWC customers; 5) directors of LAWC; 6) Charles J. Toeniskoetter's (representing Aspen)<sup>10</sup> behavior; 7) violations of Aspen including but not limited to Safe Drinking Water State Revolving Fund (SDWSRF) surcharge over-collections and issuance of financing without Commission authority; and 8) management and construction of a water treatment plant.<sup>11</sup> Because these issues and many others raised by RLAWC have already been rejected by the Commission in D.13-03-007, we do not consider them in the determination of a penalty herein.

RLAWC also misreads the D.13-03-007 conclusion when it recommends that the Commission revert the board structure of LAWC from five seats to three seats.<sup>12</sup> D.13-03-007 explicitly approves the application for Aspen to acquire

---

<sup>9</sup> See Opening Brief of RLAWC at 71.

<sup>10</sup> Because Toeniskoetter was the principle representative of Aspen in this proceeding, the Commission refers to Toeniskoetter and Aspen interchangeably throughout this decision.

<sup>11</sup> D.13-03-007.

50 percent of the common stock in LAWC.<sup>13</sup> However, D.13-03-007 does not grant the application on a *nunc pro tunc*, or retroactive basis, back to the date of the sale dated February 11, 2003. The effect of disallowing such retroactivity is this decision's imposition of a penalty under Pub. Util. Code § 2111. RLAWC presumes that the effect of disallowing such retroactivity is to void Aspen's acquisition entirely and to revert LAWC to its pre-sale three seat board structure. For the reasons stated above, RLAWC's presumption is wrong. Because that presumption is wrong and Aspen's application has been granted, not voided, LAWC's current board structure of five seats is proper, and we reject RLAWC's request.

### **3. Assessment of Factors**

D.98-12-075 set forth five factors to be considered in assessing a penalty.

Those factors involve an analysis of:

1. The severity of offense-harm to ratepayers;
3. The conduct of the utility;
4. The financial resources of the utility;
5. The totality of circumstances; and
6. The role of precedent.<sup>14</sup>

#### **3.1 Severity of Offense - Harm to Ratepayers**

Aspen states there was no harm to ratepayers in its acquisition of 50 percent of the shares of LAWC stock.<sup>15</sup> On the other hand, RLAWC argues

---

<sup>12</sup> See Opening Brief of RLAWC at VII, 73.

<sup>13</sup> D.13-03-007 at 19.

<sup>14</sup> CPUC 2d, 154 at 182-185.

<sup>15</sup> See Opening Brief of Aspen at 12-14.

Toeniskoetter's actions caused material harm.<sup>16</sup> As discussed above and in the following section, RLAWC's arguments are rejected.

D.13-03-007 states that the sale caused no physical or financial harm to ratepayers. It found that the purchase price had no impact on rates because it did not affect LAWC's ratebase,<sup>17</sup> and there was no physical harm to ratepayers because Aspen continued to provide safe and reliable service.<sup>18</sup> RLAWC's argument that the sale caused a financial harm by increasing the rates is unfounded. The increase in rates was a result of Aspen accelerating the implementation of metering, which was encouraged by the Commission and would eventually have been required by the California Water Code § 527.<sup>19</sup> Thus, rates did increase for the stated reasons, but the increase was considered to be reasonable and not harmful by D.13-03-007.

The Commission's only finding of harm to the ratepayers is that the parties failed to ensure regulatory due diligence by not seeking approval under Pub Util Code § 854(a). Pub. Util. Code § 854(a) requires that any proposed acquisition of a public utility must first be reviewed and approved by the Commission.<sup>20</sup> D.13-03-007 explains that the Commission has only granted

---

<sup>16</sup> D.13-03-007 at 61-65.

<sup>17</sup> D.13-03-007 at 10.

<sup>18</sup> D.13-03-007 at 11-14.

<sup>19</sup> D.13-03-007 at 14.

<sup>20</sup> No person or corporation, whether or not organized under the laws of this state, shall merge, acquire, or control either directly or indirectly any public utility organized and doing business in this state without first securing authorization to do so from the commission. The commission may establish by order or rule the definitions of what constitute merger,

*Footnote continued on next page*

*nunc pro tunc* treatment requests in exceptional circumstances and that its general policy is to deny them.<sup>21</sup> Further, allowing LAWC to set a precedent wherein the Commission easily approves such acquisitions retroactively would thwart the purpose of the regulation. Pub. Util. Code § 854(a) protects ratepayers by considering how private transactions of public utilities may affect the public interest.<sup>22</sup> If the Commission did not penalize LAWC for this violation, it would fail in its guarantee of providing regulatory due diligence to ratepayers.

### **3.2. Conduct of Utility**

Aspen, in its capacity as 50 percent owner of LAWC, cites D.13-03-007 and the associated record supporting the conclusion that Toeniskoetter acted properly.<sup>23</sup>

RLAWC re-visits all of its original arguments claiming bad behavior and harm by Toeniskoetter, which were rejected by D.13-03-007. RLAWC argues Toeniskoetter had: 1) breached his fiduciary duty by guaranteeing a loan without Commission approval;<sup>24</sup> 2) intentionally delayed reviewing LAWC's

---

acquisition, or control activities which are subject to this section. Any merger, acquisition, or control without that prior authorization shall be void and of no effect. No public utility organized and doing business under the laws of this state, and no subsidiary or affiliate of, or corporation holding a controlling interest in a public utility, shall aid or abet any violation of this section. (*Added Stats. 1971, Ch. 1373, Sec. 1. Effective through 2015.*)

<sup>21</sup> D.13-03-007 at 20.

<sup>22</sup> D.13-03-007 at 19.

<sup>23</sup> See Opening Brief of Aspen at 14-19.

<sup>24</sup> D.13-03-007 at 12.



SDWSRF loan and retaining over-collections;<sup>25</sup> 3) engaged in self-dealing in water rate charges; and 4) engaged in self-dealing by failing to put a construction contract out for bid and contracting with TBI Construction, formerly partly owned by Toeniskoetter.<sup>26</sup>

D.13-03-007 found Toeniskoetter acted properly in each stipulated act by: 1) showing the loan had been signed by Aspen and Roma Orvis, sharing responsibility, and that the loan was resolved;<sup>27</sup> 2) refunding the over collection found not to be a violation of the loan agreement;<sup>28</sup> 3) showing that Bruce Orvis, Sr. was the signatory and the person responsible for LAWC in the agreement for purchase of water at issue;<sup>29</sup> and 4) showing that, because Bruce Orvis, Sr. was the signatory on the TBI contract and that Toeniskoetter no longer owned part of TBI's predecessor, both Aspen and an Orvis family member were responsible for failing to put the contract out for bid, not solely Toeniskoetter.<sup>30</sup>

This decision rejects RLAWC's arguments for the same reasons D.13-03-007 rejects them, and agrees with LAWC that Toeniskoetter acted appropriately, as discussed above.

---

<sup>25</sup> D.13-03-007 at 13.

<sup>26</sup> D.13-03-007 at 16.

<sup>27</sup> D.13-03-007 at 12, 13.

<sup>28</sup> D.13-03-007 at 13.

<sup>29</sup> D.13-03-007 at 16.

<sup>30</sup> D.13-03-007 at 17.

### 3.3. Financial Resources

Aspen has adequate resources to manage and own 50 percent of the shares of LAWC stock. D.13-03-007 found that Aspen is worth more than \$1 million and its managing member, Toeniskoetter, is experienced in previously managing another water company and other businesses in Bear Valley.<sup>31</sup> Rather than challenging D.13-03-007 on its conclusions, RLAWC argues that Aspen's significant resources justify penalizing Toeniskoetter with a large penalty.<sup>32</sup> However, Pub. Util. Code § 2111 does not warrant imposing a penalty based on financial assets available. Pub. Util. Code § 2111 states that a person who violates a "requirement of the commission...is subject to a penalty of not less than five hundred dollars (\$500), nor more than fifty thousand dollars (\$50,000) for each offense."<sup>33</sup> James & Marianne Orvis and Aspen only committed one offense. Such draconian measures do not fulfill the purpose of imposing a penalty meant to remind parties to seek Commission approval.

### 3.4. Precedent

Aspen references water and telecommunications utility cases, in which a violation of Pub. Util. Code § 854(a) occurred. Most were inadvertent, and often the only harm to the ratepayers was failing to ensure regulatory due diligence in not seeking prior Commission approval for private transactions affecting a public interest. Those cases imposed penalties ranging from no penalty<sup>34</sup> to \$5,000.<sup>35</sup>

---

<sup>31</sup> D.13-03-007 at 31, Findings of Fact #29 and #30.

<sup>32</sup> See Opening Brief of RLAWC at 59.

<sup>33</sup> Pub. Util. Code § 2111.

<sup>34</sup> D.05-01-015.

RLAWC raised case law entirely dissimilar to this case. This case addresses one violation of eight years, whereas D.13-07-036<sup>36</sup> addresses numerous violations: 1) acquiring party was in foreclosure; 2) ownership changed multiple times; 3) party was not in compliance with health requirements of the county; and 4) party guaranteed a loan without Commission authority that was then foreclosed on by the bank.<sup>37</sup> Aspen did not commit any of these violations. Prior to Aspen's acquisition of 50 percent of the stock in LAWC, LAWC was violating health requirements. Rather than causing non-compliance, Toeniskoetter helped LAWC come into compliance.<sup>38</sup> And as discussed above, in D.13-03-007, the Commission determined that a loan opened by LAWC without Commission authority was resolved and involved Toeniskoetter and the existing owners, so it was not solely Toeniskoetter's fault or violation.<sup>39</sup>

### **3.5. Other Issues Raised by RLAWC**

RLAWC recommends that the Commission reimburse LAWC \$400,000 in legal fees spent on this case.<sup>40</sup> However, this is not a civil case. A penalty including legal fees is not an available option for the Commission in this adjudicatory phase of the proceeding.

---

<sup>35</sup> D.04-01-039, D.06-01-003, D.09-06-024, D.00-12-053, D.03-05-033, D.10-03-008.

<sup>36</sup> In Investigation 12-08-004.

<sup>37</sup> D.13-07-036 at 27-30.

<sup>38</sup> D.13-03-007 at 15.

<sup>39</sup> D.13-03-007 at 12, 13.

<sup>40</sup> See Opening Brief of RLAWC at VI.

RLAWC further recommends that \$400,000 of the monetary penalty fees should reimburse LAWC directly for the cost of acquiring additional water rights. RLAWC reasserts the argument that acquiring additional water rights was costly for the utility, but was not necessary to serve their existing customers.<sup>41</sup> The Commission has already decided in D.13-03-007 that the acquisition of additional water rights was reasonable and necessary to operate LAWC. D.13-03-007 states that: 1) LAWC's future customers, not existing customers, are paying for those additional rights, and 2) both Bruce Orvis, Sr. and Aspen supported that acquisition and were responsible for the cost, not Aspen alone.<sup>42</sup> For those reasons, the Commission rejects RLAWC's recommendation.

### **3.6. Conclusion**

As discussed above and pursuant to D.13-03-007 and Pub. Util. Code § 2111, a penalty, but not a substantial one, is supported by the record of this proceeding: 1) ratepayers were not physically or financially harmed; 2) the Commission determined that Toeniskoetter has the expertise to own 50 percent of LAWC; 3) precedent supports a smaller penalty, if any, given the lack of harm and Toeniskoetter's expertise; and 4) Toeniskoetter should have filed a Pub. Util. Code § 854(a) application on a timely basis. The only factor that indicates the violation should be considered an offense requiring a penalty is our general policy of according a high level of severity to any violation of the Pub. Util. Code. However, this factor must be weighed against the other factors indicating that

---

<sup>41</sup> See Opening Brief of RLAWC at VI.

applicants' failure to comply with § 854(a) was not an egregious offense, while still deterring future violations of § 854(a). The size of the penalty we impose today is tailored to the unique facts and circumstances before us in this proceeding. As ratepayers were not harmed, we impose a penalty of \$5,000 on Aspen for its one violation of Pub. Util. Code § 854(a).

#### **4. Comments on Proposed Decision**

The proposed decision of the ALJ in this matter was mailed to the parties in accordance with Pub. Util. Code § 311 and comments were allowed under Rule 14.3 of the Commission's Rules of Practice and Procedure. Opening Comments were filed by RLAWC and Aspen on March 31, 2015; and Reply Comments were filed Aspen on April 6, 2015. The issues raised in these comments have been discussed in the text above as necessary.

#### **5. Assignment of Proceeding**

Michael Picker is the assigned Commissioner and Seaneen M. Wilson is the assigned ALJ and presiding officer in this proceeding.

#### **Findings of Fact**

1. On March 29, 2013, the Commission issued D.13-03-007, granting prospective authority for James L. and Marianne S. Orvis to conditionally sell, and Aspen to conditionally buy 5,000 shares of the common stock in LAWC.

2. Opening Paragraph 3 of D.13-03-017 states that "in order to determine whether a fine should be imposed on James L. and Marianne S. Orvis and Aspen for violation of Pub. Util. Code Section § 854(a) by not filing an application

---

<sup>42</sup> D.13-03-007 at 15.

requesting authority for Aspen to acquire stock prior to the 2003 transaction, we direct the assigned ALJ to open a second phase of the current application. The scope of this phase will be limited to: 1) whether a fine should be levied; and 2) if so, what amount that fine should be. The assigned Commissioner to this proceeding will determine the categorization and need for hearing of the second phase of this proceeding in their Amended Scoping Memo.”

3. By D.13-03-017, the Commission also determined that “Aspen has the experience, ability, and financial resources to own 50 percent of the common stock in LAWC.”

4. D.13-03-007 explicitly approves the application for Aspen to acquire 50 percent of the common stock in LAWC.

5. On April 23, 2013, in compliance with OP 3, the assigned ALJ issued an e-mail ruling, in which she opened a second phase in the current application for the limited purpose of determining: 1) whether a fine should be levied against James L. and Marianne S. Orvis and Aspen; and 2) if so, what amount that fine should be.

6. A PHC was held on June 4, 2013, in which parties discussed the scope and schedule of the second phase of this proceeding.

7. On June 27, 2013, an assigned Commissioner’s Scoping Memo and Ruling amending the May 17, 2013, amended Scoping Memo and Ruling of the assigned Commissioner and ALJ.

8. In determining penalties, the Commission looks to past decisions for guidance, including but not limited to D.98-12-075, which provides the criteria by which the size of a penalty is determined.

9. D.98-12-075 set forth five factors to be considered in assessing a penalty.

Those factors involve an analysis of:

- a. The severity of offense–harm to ratepayers;
- b. The conduct of the utility;
- c. The financial resources of the utility;
- d. The totality of circumstances; and
- e. The role of precedent.<sup>43</sup>

10. Aspen has adequate financial resources to manage and own 50 percent of the shares of LAWC stock. James & Marianne Orvis and Aspen only committed one offense.

### **Conclusions of Law**

1. Pub. Util. Code § 2111 states that any “...corporation or person, other than a public utility...which fails to comply with...any requirement of the commission...aid[ing], or abet[ing] any public utility in the violation or noncompliance...is subject to a penalty...”

2. Aspen is a business entity and a legal person, both of which are included in Pub. Util. Code § 2111 granting the Commission regulatory authority to impose monetary penalties for Public Utilities Code violations.

3. Pub. Util. Code § 854(a) requires that any proposed acquisition of a public utility must first be reviewed and approved by the Commission.

4. Because D.13-03-017 uses the term “fine” and Pub. Util. Code § 2111 uses the term “penalty” when addressing how to resolve a violation, we use these

---

<sup>43</sup> CPUC 2d, 154 at 182-185.

terms interchangeably in this decision. This interchangeability of terms is not precedential.

5. A number of issues that were addressed and rejected in D.13-03-007, including but not limited to: 1) loans and terms of those loans; 2) installation of meters; 3) capital expenditures including but not limited to a tank, the roof of a tank, water meters, water rights, a water treatment plant; 4) rates charged to LAWC customers; 5) directors of LAWC; 6) Charles J. Toeniskoetter's (represents Aspen) behavior; 7) violations of Aspen including but not limited to Safe Drinking Water State Revolving Fund surcharge over-collections and issuance of financing without Commission authority; and 8) management and construction of a water treatment plant. Because these issues and others have already been rejected by the Commission in D.13-03-007, we do not consider them in the determination of a penalty herein.

6. The Commission's only finding of harm to the ratepayers in the current proceeding is that the parties failed to ensure regulatory due diligence by not seeking approval under Public Utilities Code § 854(a).

7. Regarding conduct, as detailed in D.13-03-007, the Commission found that Toeniskoetter acted appropriately by, for example: 1) showing the loan had been signed by Aspen and Roma Orvis, sharing responsibility, and that the loan was resolved; 2) refunding the over collection found not to be a violation of the loan agreement; 3) showing that Bruce Orvis, Sr. was the signatory and the person responsible for LAWC in the agreement for purchase of water at issue; and 4) showing that because Bruce Orvis, Sr. was the signatory on the TBI contract and that Toeniskoetter no longer owned part of TBI's predecessor, both Aspen



and an Orvis family member were responsible for failing to put the contract out for bid, not solely Toeniskoetter.

8. Pursuant to D.13-03-007 and Pub. Util. Code § 2111, a penalty, but not a substantial one, is supported by the record of this proceeding: 1) ratepayers were not physically or financially harmed; 2) the Commission determined that Toeniskoetter has the expertise to own 50 percent of LAWC; 3) precedent supports a smaller penalty, if any, given the lack of harm and Toeniskoetter's expertise; and 4) Toeniskoetter should have filed a Pub. Util. Code § 854(a) application on a timely basis. The only factor that indicates the violation should be considered an offense requiring a penalty is our general policy of according a high level of severity to any violation of the Pub. Util. Code. However, this factor must be weighed against the other factors indicating that applicants' failure to comply with § 854(a) was not an egregious offense, while still deterring future violations of § 854. The size of the penalty we impose today is tailored to the unique facts and circumstances before us in this proceeding.

9. As ratepayers were not harmed, we should impose a penalty of \$5,000 on Aspen Forest, for its one violation of Pub. Util. Code § 854(a).

10. Because this is not a civil case, a penalty including legal fees is not an available option for the Commission in this adjudicatory phase of the proceeding.

11. Because the Commission has already decided in D.13-03-007 that the acquisition of additional water rights was reasonable and necessary to operate LAWC, there is no reason for Aspen to reimburse LAWC directly for the cost of acquiring additional water rights.

12. Pursuant to Pub. Util. Code §1701.5, this proceeding should be resolved, but remains open to address a pending application for rehearing.

**O R D E R**

1. Pursuant to Public Utilities (Pub. Util.) Code § 2111, for its violation of Pub. Util. Code § 854(a), the California Public Utilities Commission assesses a penalty of \$5,000 on Aspen Forest Investment Co., LLC (Aspen). This penalty shall be paid by Aspen by check or money order payable to the California Public Utilities Commission (Commission) and mailed or delivered to the Commission's Fiscal Office at 505 Van Ness Avenue, Room 3000, San Francisco, CA 94102, within 30 days of the effective date of this order. Write on the face of the check or money order "For Deposit to the General Fund per Decision \_\_\_\_\_."

2. Pursuant to Public Utilities Code §1701.5, this proceeding is resolved, but remains open to address a pending application for rehearing.

This order is effective today.

Dated \_\_\_\_\_, at San Francisco, California.